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硕 士 学 位 论 文

国际服务贸易原产地规则研究

——以 GATS 规范为核心的分析

Study on the Rules of Origin of International Trade in
Services ——Focusing on the GATS Norms

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内容摘要

在《服务贸易总协定》体制中，“服务贸易原产地”是作为一个基础理论问题而存在的。但在此问题上，由于《服务贸易总协定》文本界定的含糊不清以及争端解决实践的缺位，导致对此问题认定的异常困难。本文主要基于《服务贸易总协定》第 1 条和第 28 条以及有关的 WTO 争端解决报告，对国际服务贸易原产地规则进行了初步探讨。

除前言和结论外，本文共分为四章。

第一章在简要分析货物贸易原产地规则的基础上，提出了服务贸易领域引入原产地规则的必要性，并得出货物贸易原产地规则不能适用于服务贸易领域的结论。

第二章论述了《服务贸易总协定》下“服务”的原产地规则问题。首先通过对《服务贸易总协定》第 1 条第 2 款有关服务贸易定义的分析，指出“跨境提供”和“境外消费”两种模式下，服务的原产地是通过服务本身的地理界限来识别的，关键在于确定服务提供者的地理位置；而“商业存在”和“自然人移动”模式则是完全以服务提供者的“原产地”代替服务的原产地。在此基础上，笔者对《服务贸易总协定》的此种定义方式进行分析，并探讨了《服务贸易总协定》有关此做法的谈判历史，最后提出沿袭货物贸易领域的“实质性改变标准”，在服务贸易领域引入“实质性投入标准”是不可行的。

第三章探析了《服务贸易总协定》下“服务提供者”的原产地规则问题。就自然人服务提供者的来源来说，《服务贸易总协定》分采“国籍”与“永久居留权”标准，同时以“居所”为基本连接点；对法人服务提供者的来源则区别一般法人和“商业存在”两种情况分采“准属地法主义+实质性业务活动”标准和“资本控制说”标准。从 WTO 有关争端解决相关案例来看，上述标准存在着明显不足。

第四章是对区域经济一体化中有关服务贸易原产地规则的分析。主要对欧共体条约、NAFTA 以及 CEPA 中有关条款进行了探讨，并对 CEPA 有关“香港法人”的界定进行了重点论述。

关键词：服务；服务提供者；原产地

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ABSTRACT

In the system of the GATS, “the origin of trade in services” is a basic concept. Due to the ambiguity of the GATS and the absence of the WTO judicature, the issue becomes extremely difficult. This thesis is mainly on the Article 1 and Article 28 of the GATS and some related dispute settlement reports of the WTO, brings forward the preliminary legal study of the origin of international trade in services.

Besides the Preface and Conclusion, this thesis divides into four chapters.

Chapter 1 brings forward the necessity of the introduction of the rules of origin to the trade in services area, based on the brief analysis of the origin of trade in goods, and concludes that the rules of the origin of trade in goods can't be applied to the trade in services.

Chapter 2 analyzes the rules of the origin of “service” in the GATS. Firstly, in the modes of “Cross-border Supply” and “Consumption Abroad”, which are defined in the second item of Article 1 of the GATS, the origin of service is identified by the territory of the service itself, and the location of the service supplier is the key element. While in the modes of “Commercial Presence” and “Movement of Natural Persons”, the origin of service is wholly equal to the “origin” of the service supplier. Then, the author analyzes the reason and the negotiation history of this kind of definition of trade in services in GATS. Lastly, this chapter concludes that the “substantial input” which follows the “last substantial transformation” that is applied to the trade in goods is unpractical to the trade in services.

Chapter 3 is the study of the rules of origin of “service supplier” in the GATS. As far as the origin of the natural persons service supplier, the GATS adopts the “nationality” and “permanent residence” criteria, meanwhile uses the “residence” as the basic connecting point. To the origin of the legal persons service supplier, the GATS distinguishes the ordinary legal persons from the “Commercial Presence”, adopts “applicable law & substantial business operations” criteria and “capital control” criteria. There are obvious shortages in the above criterias, according to the related disputes of WTO.

Chapter 4 analyzes the rules of origin of the trade in services in the regional economic integration agreements. It focuses on related provisions of EC Treaty, NAFTA and CEPA, especially the definition of “Hong Kong legal person” in the CEPA.

KEY WORDS: Service; Service Supplier; Origin

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缩略语表

Abbreviations

CEPA Closer Economic Partnership Arrangement 《更紧密经贸关系安排》

DSB Dispute Settlement Body 争端解决机构

EC European Communities 欧共体

EIA Economic Integration Agreement 经济一体化协定

GATS General Agreement on Trade in Services 《服务贸易总协定》

GATT General Agreement on Tariffs and Trade 《关税与贸易总协定》

NAFTA North American Free Trade Agreement 《北美自由贸易协定》

RTA Regional Trade Agreement 区域贸易协定

WTO World Trade Organization 世界贸易组织

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案例表

Table of Cases

“加拿大汽车案”	Canada-Certain Measures Affecting the Automotive Industry
“美国赌博服务案”	United States-Measures Affecting the Cross-Border Supply of Gambling and Betting Services
“欧共体香蕉案”	European Communities-Regime for the Importation, Sale and Distribution of Bananas

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